hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4684 OF 2006

Pariwar Co-op. Hsg. Soc. Ltd. ... Petitioner
Vs.
The Mun. Corporation of the City
of Thane and Ors. ... Respondents

Ms. Gauri Godse for Petitioner.

Mr. R.S. Apte for R. Nos. 1 and 2.

Mr. J.N. Shirdhonkar for R. No. 3.

Mr. D.W. Bhosale for R. No. 4.

CORAM: F.I. REBELLO &
R.V. MORE,**JJ.**
DATED: JANUARY 09, 2007

P.C.:

. Rule. Heard forthwith.

. The Petitioners approached this court contending that an illegal construction has been put up by Respondent No. 4 on the land which the Respondent No. 3 is interested. It is the case of Respondent No. 3 that there is development agreement between themselves and one M/s. Sadhana Constructions through its proprietor Shri Pandit Parsuram Bhoir. The case of the Respondent No. 4 is that they are sub developers through the said Sadhana Constructions. Neither the Respondent No. 3 nor the Respondent No. 4 has produced before us any licence issued by Respondent No. 1 for the said constructions.

. The Respondent No. 1 through Shri. Krishna Dunda Nipurte, Asst. Commissioner has filed affidavit. In the said affidavit, it is set out that the notice under Section 260 and 267 of the B.P.M.C. Act, 1949 dated 12.7.2005 were issued to Shri. Pappu Gulab Umap, Shri. Dadasaheb Dhondiba Bhoite and Smt. Phulabai Narayan Sarkale (Respondent No. 3). It is further pointed out that various suits have been filed by residents in the said premises. Though earlier order of status quo was granted, the said orders have been vacated. Reference for that purpose is made to Paragraphs 4, 5 and 6 of the affidavit in reply. In paragraph 8 of the reply, it is also pointed out that even the demolished constructions have been reconstructed without permission. In paragraph 13, it is set out that the Corporation after issuing notice and after giving opportunity, which was not availed of, thereafter took decision to take action against the unauthorised construction according to law.

. At the hearing of this petition, the counsel for Respondent Nos. 3 and 4 were called upon to produce any documentary evidence of Respondent No. 1 of having issued development permission in their favour. The only answer given by Respondent No. 4 is that they are sub developers and carrying on development through M/s. Sadhana Constructions and they do not have copy of the development permission. Similar answer has been given on behalf of Respondent No. 3.

. From the documentary evidence on record, as well as the reply filed by Respondent No. 1, it is clear that there has been no development permission and the building has been constructed without authority of law. In the light of that the petition is disposed of by issuing following directions :

(1) The Respondent No. 1 is directed to take steps against the unauthorised construction in terms of law within eight weeks from today.

(2) The Police officer incharge of the police station in the jurisdiction of which the construction has been situated to offer police protection to the Respondent No.1 when the Respondent No. 1 calls upon the said police inspector of the police station to give police protection.

. Rule made absolute accordingly. No order as to costs.

. The counsel for Respondent No. 4 seeks stay of the order. No case made out for stay. Application for stay is rejected.

(R.V. MORE,J.) **(F.I.REBELLO, J.)**